

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BAO YANG,)	
)	CASE NO. C13-1565-RSM-MAT
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	RE: SOCIAL SECURITY DISABILITY
CAROLYN W. COLVIN, Acting)	APPEAL
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Bao Yang proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's applications for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be REMANDED for further proceedings.

FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1966.¹ She is a native of Laos and did not attend school,

¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case

01 with the exception of ESL classes in the United States. (AR 45.) She has past relevant work
02 as a sewing machine operator and poultry eviscerator.

03 Plaintiff filed an application for DIB on June 12, 2010 and protectively for SSI benefits
04 on March 7, 2011, alleging disability beginning November 17, 2008. She is insured for DIB
05 through December 31, 2013. Plaintiff's application was denied at the initial level and on
06 reconsideration, and she timely requested a hearing.

07 On December 19, 2011, ALJ Larry Kennedy held a hearing, taking testimony from
08 plaintiff and a vocational expert. (AR 28-67.) On February 8, 2012 the ALJ issued a decision
09 finding plaintiff not disabled from April 1, 1999 through the present. (AR 12-22.)

10 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
11 on July 9, 2013 (AR 1-5), making the ALJ's decision the final decision of the Commissioner.
12 Plaintiff appealed this final decision of the Commissioner to this Court.

13 **JURISDICTION**

14 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

15 **DISCUSSION**

16 The Commissioner follows a five-step sequential evaluation process for determining
17 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
18 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had
19 not engaged in substantial gainful activity since the alleged onset date of December 31, 2013.
20 At step two, it must be determined whether a claimant suffers from a severe impairment. The
21 ALJ found plaintiff's depression, anxiety and post-traumatic stress disorder severe. Step three

22 Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 asks whether a claimant's impairments meet or equal a listed impairment. The ALJ found that
02 plaintiff's impairments did not meet or equal the criteria of a listed impairment.

03 If a claimant's impairments do not meet or equal a listing, the Commissioner must
04 assess residual functional capacity (RFC) and determine at step four whether the claimant has
05 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to
06 perform a full range of work at all exertional levels but with nonexertional limitations.
07 Plaintiff could perform simple, repetitive tasks and follow short, simple instructions, doing
08 work that needs little or no judgment and the performance of simple duties that can be learned
09 on the job in a short period. She has average ability to perform sustained work activities (i.e.,
10 can maintain attention and concentration, persistence, and pace) in an ordinary work setting on
11 a regular and continuing basis (i.e., 8 hours a day, for 5 days a week, or an equivalent work
12 schedule) within customary tolerances of employers rules regarding sick leave and absence.
13 She may have occasional interactions of a superficial nature with co-workers and supervisors
14 and could work in close proximity to co-workers but not in a cooperative or team effort.
15 Plaintiff can deal with occasional work setting changes. Plaintiff cannot deal with the general
16 public, as in a sales position or where the general public is frequently encountered as an
17 essential element of the work process, but incidental contact of a superficial nature with the
18 general public is not precluded. With that assessment, the ALJ found plaintiff able to perform
19 her past relevant work as a poultry eviscerator.

20 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
21 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
22 an adjustment to work that exists in significant levels in the national economy. Finding

01 plaintiff not disabled at step four, the ALJ did not proceed to step five.

02 This Court's review of the ALJ's decision is limited to whether the decision is in
03 accordance with the law and the findings supported by substantial evidence in the record as a
04 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
05 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
06 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
07 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
08 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
09 F.3d 947, 954 (9th Cir. 2002).

10 Plaintiff argues that the ALJ failed to properly consider the impact of her right upper
11 extremity impairment on her ability to perform her past relevant work as a poultry eviscerator.²
12 She also argues the ALJ's consideration of the opinion of examining psychologist Aaron
13 Russell, Psy.D. was not legally sufficient. She requests remand for an award of benefits or,
14 alternatively, for further administrative proceedings. The Commissioner argues that the ALJ's
15 decision is supported by substantial evidence and should be affirmed.

16 Impact of Carpal Tunnel Syndrome on Ability to Perform Past Relevant Work

17 Plaintiff argues the ALJ erred by failing to take into account the effect of her carpal
18 tunnel syndrome (CTS) on her RFC. As a result, plaintiff argues, her ability to perform her
19 past relevant work as a poultry eviscerator is called into question.

20 While the ALJ acknowledged that Dr. Amirhesam Ehsan diagnosed mild right CTS

21 2 In her Opening Brief, plaintiff also argued the ALJ erred in finding her able to perform her
22 past relevant work as a sewing machine operator, but her Reply Brief acknowledges that the ALJ did not
find her capable of performing this work. (Dkt. 16 at 3; Dkt. 18 at 2.)

01 based on electrodiagnostic studies, the ALJ found the condition non-severe, and assessed no
02 specific limitations in plaintiff's physical functional capacity based on this condition. Plaintiff
03 argues that, regardless of the characterization of her CTS as severe or non-severe,³ the ALJ was
04 obligated to include any limiting effects from that condition in assessing her RFC. *See* 20
05 C.F.R. §§ 404.1545(e), 416.945(e); SSR 96-8p (limiting effects of all impairments, even those
06 that are not severe, "will" be considered in determining a claimant's RFC).

07 The ALJ found plaintiff capable of performing her past relevant work as a poultry
08 eviscerator. (AR 21, 56.) While this job is listed at the "light" exertional level, it is
09 categorized as "repetitive" work, requiring "significant" handling and "medium" level manual
10 dexterity, with "constant" reaching and handling and "occasional" fingering. Dictionary of
11 Occupational Titles (DOT), 525.687-074, and Selected Characteristics of Occupations Defined
12 in the DOT; 1991 WL 674456.

13 Plaintiff was diagnosed with mild right carpal tunnel syndrome in 2011 after reporting
14 right hand and wrist pain for one year. (AR 393.) She testified she left the poultry eviscerator
15 job because the scissors were too big for her hand and because her hands hurt. (AR 47.) She
16 described continuing problems with her right hand, including loss of strength and tingling.
17 (AR 48.) While the ALJ found plaintiff's symptomatic testimony not fully credible (AR 18),
18 he did not specifically reject her testimony about her problems with her right hand. Nor was
19 the vocational expert asked to opine on plaintiff's ability to perform the job of poultry
20 eviscerator with right upper extremity problems.

21
22 ³ An impairment or combination of impairments is not severe if it does not significantly limit the
claimant's physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1521, 416.921.

01 The Court finds it necessary to remand this matter to allow the ALJ to reevaluate
02 plaintiff's right upper extremity complaints and her ability to perform her past relevant work in
03 light of that reconsideration. It seems likely the ALJ will need to obtain clarification from
04 plaintiff's medical providers about the status of her CTS and any related limitations in her
05 functional capacity.

06 Opinion of Dr. Russell

07 Plaintiff also assigns error to the ALJ's consideration of the opinion of consulting
08 examiner Aaron Russell, Psy.D. (AR 281-85.) Dr. Russell assessed a number of functional
09 limitations related to plaintiff's ability to sustain an ordinary routine, to interact with coworkers
10 and the public, to understand, remember and carry out instructions, and to maintain attention
11 and concentration. (*Id.*) The ALJ discounted these limitations as caused by a language or
12 cultural barrier between plaintiff and the examiner. (AR 20.) The ALJ also referenced the
13 finding that plaintiff's self-reports of her activities were less than credible, finding Dr. Russell's
14 opinions inconsistent with those self-reported activities. (*Id.*)

15 The ALJ's consideration of Dr. Russell's opinions is not supported by substantial
16 evidence. Plaintiff was assisted by a qualified interpreter at Dr. Russell's examination. (AR
17 281.) While Dr. Russell noted the impact of a language barrier on plaintiff's ability to interact
18 with coworkers and the public, he also referenced psychological problems as another source of
19 these limitations. There is no indication that language or cultural factors played any role in
20 plaintiff's ability to remember instructions or maintain attention or concentration. While
21 plaintiff's fund of knowledge may have been affected by cultural context, the test of her abstract
22 thinking ability utilized typically familiar Laotian proverbs. (AR 283.) The ALJ should

01 re-evaluate Dr. Russell's opinions on remand.

02 Remand

03 The Court has discretion to remand for further proceedings or to award benefits. *See*
04 *Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may direct an award of
05 benefits where "the record has been fully developed and further administrative proceedings
06 would serve no useful purpose." *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir.
07 2002).

08 Such a circumstance arises when: (1) the ALJ has failed to provide legally
09 sufficient reasons for rejecting the claimant's evidence; (2) there are no
10 outstanding issues that must be resolved before a determination of disability can
be made; and (3) it is clear from the record that the ALJ would be required to
find the claimant disabled if he considered the claimant's evidence.

11 *Id.* at 1076-77.

12 In this case, the Court finds remand for further proceedings to be the appropriate remedy
13 in light of the necessity to enhance the record. *See Harman v. Apfel*, 211 F.3d 1172, 1178 (9th
14 Cir. 2000) (remanding for further proceedings to allow the vocational expert to address
15 limitations set forth in the improperly discredited medical opinion evidence).

16 CONCLUSION

17 For the reasons set forth above, this matter should be REMANDED for further
18 proceedings.

19 DATED this 8th day of April, 2014.

20
21 

22 Mary Alice Theiler
Chief United States Magistrate Judge